

TRADEMARK TRIAL AND
APPEAL BOARD

04 APR -1 AM 9:30

03-24-2003
U.S. Patent & TMO/TM Mail Rpt Dt #30

**UNITED STATES PATENT AND TRADEMARK
OFFICE**

Trademark Trial and Appeal Board

2900 Crystal Drive

Arlington, Virginia 22202-3513

Mailed: March 14, 2003

SULLCRAFT INDUSTRIES, CORP.

30 WEST SCOTT AVE.

RAHWAY, NJ 07065

Cancellation No. 92041739

Reg. No. 811749

Lance J. Lieberman

Cohen, Pontani, Lieberman & Pavane

551 Fifth Avenue, Suite 1210

New York, NY 10176

American Marketing Enterprises,
Inc.

V.

SULLCRAFT INDUSTRIES, CORP.

Tamika Whitsey, Legal Assistant:

A petition, a copy of which is attached, has been filed to
cancel the above-identified registration.

Proceedings will be conducted in accordance with the
Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Patent and Trademark Rule 1.7 for expiration date
falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the
Trademark Rules of Practice, set forth in Title 37, part 2,
of the Code of Federal Regulations. The parties are
reminded of the recent amendments to the Trademark Rules
that became effective October 9, 1998. See Notice of Final
Rulemaking published in the *Official Gazette* on September
29, 1998 at 1214 TMOG 145. Slight corrections to the
rules, resulting in a correction notice, were published in
the *Official Gazette* on October 20, 1998 at 1215 TMOG 64.
A copy of the recent amendments to the Trademark Rules, as

04 APR -1 AM 9:30

TRADEMARK TRIAL AND
APPEAL BOARD

Q

well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

Discovery period to open:	April 03, 2003
Discovery period to close:	September 30, 2003
30-day testimony period for party in position of plaintiff to close:	December 29, 2003
30-day testimony period for party in position of defendant to close:	February 27, 2004
15-day rebuttal testimony period for plaintiff to close:	April 12, 2004

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X

AMERICAN MARKETING ENTERPRISES, INC., :

Petitioner

VS.

SULLCRAFT INDUSTRIES, CORP., :

Respondent.

-----X



02-24-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #30

Thereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Attn: Box TTAB, Arlington, VA 22202-3513, on February 20, 2003.
(Date of Deposit)
Name of applicant, assignee or Representative: [Signature]
Signature: [Signature]
February 20, 2003
Date of Signature

PETITION TO CANCEL A REGISTRATION IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Asst. Commissioner for Trademarks
2900 Crystal Drive
Attn: Box TTAB
Arlington, VA 22202-3513

TRADEMARK TRIAL AND
APPEAL BOARD
03 MAR 14 AM 9:30

SIR:

AMERICAN MARKETING ENTERPRISES, INC., a corporation organized and existing under the laws of the State of New York, and located and doing business at 10 West 33rd Street, New York, New York 10001 (hereinafter referred to as "Petitioner"), believes that it will be damaged by the continued registration of the trademark "NITE TIME" shown in U.S. Registration No. 811,749 and registered in respect of "men's, boys', women's and girls' pajamas", owned of record by Sullcraft Industries, Corp., a corporation of Pennsylvania having a last known address (as

9

listed in the current records of the U.S. Patent and Trademark Office) of 30 West Scott Avenue, Rahway, New Jersey 07065, and accordingly petitions to cancel the same.

As grounds for cancellation, it is respectfully shown and alleged that:

1. On information and belief, Respondent is the owner of U.S. Registration No. 811,749, issued July 26, 1966 and last renewed on July 26, 1986, for the mark "NITE TIME" in respect of "men's, boys', women's and girls' pajamas".

2. On information and belief, Respondent has long since abandoned and ceased all use of the said trademark "NITE TIME" without intent to resume use thereof.

3. Petitioner has a *bona fide* intention to use the trademark "NITETIME" in interstate commerce in connection with clothing for children, namely, pants, shirts, slacks, t-shirts, socks, shorts, dresses, skirts, jeans, jumpers, jumpsuits, jackets, coats, sport jackets, neckties, sweatsuits, sweatshirts, sweatpants, anklets, bathing suits, bathing trunks, bathrobes, beach cover-ups, belts, hats, cloth bibs, shoes, sneakers, boots, sandals, slippers, pajamas, nightshirts, nightgowns, underpants, undershirts, sweaters, masquerade costumes and masks, overalls, coveralls, gloves, evening gowns, nightgowns, gym shorts, gym suits, halter tops, head bands, jogging suits, leggings, overcoats, petticoats, playsuits, pullovers, rainwear, suits, sweat bands, athletic uniforms, unitards, and vests.

4. On February 19, 2003, Petitioner filed in the U.S. Patent and Trademark Office a formal application to register the mark "NITETIME", based upon Petitioner's *bona fide* intention to use that mark in commerce in connection with "clothing for children, namely, pants, shirts, slacks, t-shirts, socks, shorts, dresses, skirts, jeans, jumpers, jumpsuits, jackets, coats, sport jackets, neckties, sweatsuits, sweatshirts, sweatpants, anklets, bathing suits, bathing trunks, bathrobes, beach cover-ups, belts, hats, cloth bibs, shoes, sneakers, boots, sandals, slippers, pajamas, nightshirts, nightgowns, underpants, undershirts, sweaters, masquerade costumes and masks, overalls, coveralls, gloves, evening gowns, nightgowns, gym shorts, gym suits, halter tops,

head bands, jogging suits, leggings, overcoats, petticoats, playsuits, pullovers, rainwear, suits, sweat bands, athletic uniforms, unitards, and vests". Petitioner's said application has been assigned Serial No. 78/216,525, but on information and belief has not yet been examined by the U.S. Patent and Trademark Office.

5. Petitioner believes and fully expects that, upon examination of its aforesaid application to register the trademark "NITETIME" in connection with "clothing for children, namely, pants, shirts, slacks, t-shirts, socks, shorts, dresses, skirts, jeans, jumpers, jumpsuits, jackets, coats, sport jackets, neckties, sweatsuits, sweatshirts, sweatpants, anklets, bathing suits, bathing trunks, bathrobes, beach cover-ups, belts, hats, cloth bibs, shoes, sneakers, boots, sandals, slippers, pajamas, nightshirts, nightgowns, underpants, undershirts, sweaters, masquerade costumes and masks, overalls, coveralls, gloves, evening gowns, nightgowns, gym shorts, gym suits, halter tops, head bands, jogging suits, leggings, overcoats, petticoats, playsuits, pullovers, rainwear, suits, sweat bands, athletic uniforms, unitards, and vests", the Patent and Trademark Office will refuse registration of the mark on the ground that, as applied to Petitioner's goods, its mark "NITETIME" so resembles the Respondent's mark "NITE TIME" (the subject of U.S. Registration No. 811,749) that the public is likely to be confused, mistaken or deceived. Because Applicant's and Petitioner's wordmarks are almost identical, and are or were used or intended for use in connection with the same types of goods -- i.e. articles of clothing -- Petitioner expects and believes that it will be unable to attain registration of its mark "NITETIME" so long as Respondent's mark "NITE TIME" remains on the Principal Register.

6. Petitioner thus believes that it is likely to be damaged by continuance of said U.S. Registration No. 811,749.

WHEREFORE, it is respectfully prayed that this Petition be granted and that U.S. Registration No. 811,749 be cancelled.

The statutory fee of \$300.00 for this Petition for Cancellation, and a duplicate copy of this Petition for Cancellation, are enclosed. Any additional fees or charges required at this time in connection with this Petition for Cancellation may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Petitioner, AMERICAN MARKETING ENTERPRISES, INC., hereby appoints COHEN, PONTANI, LIEBERMAN & PAVANE; MYRON COHEN, Reg. No. 17,358; THOMAS C. PONTANI, Reg. No. 29,763; LANCE J. LIEBERMAN, Reg. No. 28,437; MARTIN B. PAVANE, Reg. No. 28,337; THOMAS LANGER; Reg. No. 27,264; MICHAEL C. STUART, Reg. No. 35,698; JULIA S. KIM, Reg. No. 36,567; EDWARD M. WEISZ, Reg. No. 37,257; WILLIAM A. ALPER; VINCENT M. FAZZARI, Reg. No. 26,879; ALFRED W. FROEBRICH, Reg. No. 38,887; ALFRED H. HEMINGWAY, JR., Reg. No. 26,736; KENT H. CHENG, Reg. No. 33,849; YUNLING REN, Reg. No. 47,019; ROGER S. THOMPSON, Reg. No. 29,594; JEREMY A. KAUFMAN; F. BRICE FALLER, Reg. No. 29,532; and TEODOR J. HOLMBERG, Reg. No. 50,140; all attorneys-at-law duly admitted to practice under the laws of the State of New York, and all with offices at 551 Fifth Avenue, Suite 1210, New York, New York 10176, as its attorneys, with full power of substitution and revocation, to prosecute this Cancellation and to transact all business in the Patent and Trademark Office in connection therewith.

Kindly direct all telephone calls in respect of this Petition for Cancellation to Lance Lieberman at telephone No. 212-687-2770.

All correspondence in connection with this Petition for Cancellation should be addressed to:


Lance J. Lieberman
Cohen, Pontani, Lieberman & Pavane
551 Fifth Avenue - Suite 1210
New York, New York 10176

LANCE J. LIEBERMAN declares that he is an attorney for Petitioner AMERICAN MARKETING ENTERPRISES, INC. and is authorized to execute this Petition and Declaration on its behalf; that he has read the foregoing Petition for Cancellation and knows the contents thereof; that the facts and allegations set forth therein are, to the best of his knowledge, true and correct except as to matters stated therein to be upon information and belief and that as to those matters he believes them to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine, or imprisonment, or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the Cancellation.

AMERICAN MARKETING ENTERPRISES, INC.

Dated: February 20, 2003

By


Lance J. Lieberman
Attorney for Petitioner

COHEN, PONTANI, LIEBERMAN & PAVANE
551 Fifth Avenue - Suite 1210
New York, New York 10176-0091
Telephone: (212) 687-2770
Fax: (212) 972-5487